रजिस्ट्री सं० डी० 221 REGISTERED NO. D. 221

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 39] नई दिल्ली, शुक्रवार, अगस्त 11, 1972/श्रावण 20, 1894
No. 39] NEW DELHI, FRIDAY, AUGUST 11, 1972/SRAVANA 20, 1894

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 11th August, 1972:—

I

BILL No. XIII OF 1972

A Bill further to amend the Representation of the People Act, 1951

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Representation of the People (Amendment) Act, 1972.

(2) It shall come into force at once or on such date retrospectively or otherwise as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of new section 7A.

43 of 1951.

2. After section 7 of the Representation of the People Act, 1951, the following new section shall be inserted, namely:—

Disqualification for causing loss to the Exchequer in his conduct as a Minister or if found guilty of corrupt practice.

"7A. A person shall be disqualified for being chosen as, and for being, a member of the House of the People or the Legislative Assembly of a State, if his action or conduct as a Minister has caused loss to the Union or State Exchequer or he has been found guilty by a court of law or a commission of inquiry of any kind of corrupt practice, as the case may be.".

STATEMENT OF OBJECTS AND REASONS

The recommendations made by the Mudholkar Commission need careful consideration because of their intrinsic merit inasmuch as they have been made in order to ensure high standards of rectitude in public service. To achieve this aim it is necessary to introduce a provision to disqualify a person for being a member of the House of the People or Legislative Assembly of a State in case the said member during his tenure as a Minister is held to have caused loss to the Union or the State Exchequer by his act and conduct or had been found guilty by a court of law or a commission of inquiry of any kind of corrupt practice. Such a provision would go a long way to eliminate instances of abuse of power arbitrary action and favouritism. With this object in view necessary amendments are desirable in the Representation of the People Act, 1951.

Hence the Bill.

OM PRAKASH TYAGI.

II

Bill No. XXI of 1972

A Bill further to amend the Indian Penal Code.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Penal Code (Amendment) Act, 1972.

(*2*) It extends to the whole of India.

(*3*) It shall come into force at once.

Amendment of section 53.

45 of 1860.

2. To section 53 of the Indian Penal Code, the following proviso shall be added, namely:—

"Provided that notwithstanding anything contained in this section or any other section of this Code which empowers a Court to award a sentence of death, no Court shall inflict such a sentence for any offence in this Code, excepting an offence punishable under section 303, unless it finds appreciable aggravating factors in the crime, and which factors shall be clearly enumerated in the judgment of the Court."

STATEMENT OF OBJECTS AND REASONS

The laws relating to Crime and Punishment have become outdated. The traditional crimes such as Murder and Dacoity pale into insignificance before the new type of anti-social crimes such as black-marketing, adulteration of drugs and foodstuffs etc., for while the murderer usually kills only one victim, these anti-social criminals commit wholesale murder and pose a far greater menace to the community than an ordinary murderer or a dacoit. And yet under the existing laws of punishment, it is the black-marketeer and the adulterator of drugs and foodstuffs who, even when he is found guilty, escapes with a light punishment, and it is the murderer and the dacoit who is awarded a much heavier sentence and quite frequently the extreme penalty of death.

The rising social consciousness of the people has also brought about a change in their prespective and crime is no longer looked upon as the isolated act of an individual but it is increasingly realised that the social and economic pressure of the environment created by the way of life adopted by the Community plays a very large part in forming, nursing and developing those mental and emotional aberrations which precipitate a crime. The responsibility for the crime is not of the individual alone but of the Community also and so a death sentence appears to be a legacy of the barbaric past. Further, statistics show that the death sentence has not achieved its purpose for the rising spiral of crime, including such offences which are punishable with death, shows that it has failed to act as a deterrent. Instances are also not wanting where an innocent person has paid this penalty but the finality of the sentence leaves no scope for amends and wanton killing was done in the name of justice.

Can the death penalty be abolished in every case? This experiment was tried in some foreign countries but it did not prove successful and it had to be brought back on the statute book though in a modified form.

This Bill is an attempt to reach a *'via media'*. While it does not totally abolish the death penalty it reverses the approach which should be made in such a case. The existing approach is that death penalty should normally be inflicted where a life has been taken, but if there are extenuating circumstances, the alternative punishment of life imprisonment should be awarded. The suggested approach in this Bill is that the normal punishment should be a sentence of imprisonment and only if there are appreciable aggravating factors, a death penalty should be inflicted.

Exception has been made in the case of an offence under section 303 of the Indian Penal Code for the aggravating factors exist in the definition of the offence itself.

ANAND NARAIN MULLA.

III

BILL No. XI OF 1972

A Bill further to amend the Constitution of India

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

1. (*1*) This Act may be called the Constitution (Amendment) Act, 1972. Short title and commencement.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In article 348 of the Constitution, in clause (*1*), the words "or in the official language of the Union, namely, Hindi in Devanagari script" shall be added at the end. Amendment of article 348.

STATEMENT OF OBJECTS AND REASONS

Article 343 of the Constitution declares that the official language of the Union shall be Hindi in Devanagari script. At present all proceedings in the Supreme Court and every High Court are being done in English language. Our Constitution has been in force for more than 22 years and it is rather unfortunate that Hindi is not allowed to be used in proceedings of the Supreme Court and of the High Courts. Article 349 provides that during the period of 15 years from the commencement of the Constitution, no Bill making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved without the sanction of the President. The said 15 years have expired but still Hindi language is not allowed to be used in proceedings in the Supreme Court or in the High Courts. It would be in fitness of things, if the official language of the Union is allowed to be used alongwith English in all proceedings in the Supreme Court and in every High Court. With this object in view the present amendment is necessary and would go a long way in enhancing national prestige.

Hence this Bill.

OM PRAKASH TYAGI.

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to amend article 348 of the Constitution with a view to provide for use of Hindi language along with English in the Supreme Court and the High Courts and for other purposes as specified in clause (1) of article 348. This is likely to involve a recurring expenditure of about Rs. 5 lacs annually in respect of Supreme Court and High Courts in the Union territories.

No non-recurring expenditure is likely to be involved from the Consolidated Fund of India.

IV

Bill No. XXIII of 1972

A Bill further to amend the Factories Act, 1948.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title, extent and Commencement.

1. (*1*) This Act may be called the Factories (Amendment) Act, 1972.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

Amendment of section 48.

2. In section 48 of the Factories Act, 1948,— 63 of 1948.

(*i*) for clause (*1*), the following clause shall be substituted, namely:—

"(*1*) In every factory wherein more than twenty women workers are ordinarily employed, adequate and suitable rooms shall be provided and maintained as creches and kindergartens for the use of children under the age of six years of such women.".

(*ii*) in clause (*2*), after the words "in the care" the words "and teaching" shall be inserted; and

(*iii*) in sub-clause (*b*) of clause (*3*) after the words "for the care" the words "and teaching" shall be inserted.

STATEMENT OF OBJECTS AND REASONS

Under section 48 of the Factories Act, 1948, it is obligatory for the factories wherein more than fifty women workers are ordinarily employed to provide and maintain suitable rooms for the use of children under the age of six years of such women. These rooms are utilised as "Creches"—a public nursery for children. It is felt that these facilities should be made available in factories employing more than twenty women workers and that provision should be made to impart education to the children of such women in these rooms. This can be achieved by making it obligatory for the factories to provide kindergartens in the factories. This amending Bill seeks to achieve that object.

SHRIMATI LAKSHMI KUMARI CHUNDAWAT

V

Bill No. XIV of 1972

A Bill to amend the law relating to the High Courts of Bombay, Calcutta, and Madras.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the High Court (Abolition of Original Side) Act, 1972.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Abolition of Original Sides of the High Courts of Bombay, Calcutta and Madras.

2. Notwithstanding any thing contained in any other law for the time being in force, the Original Side of the High Courts of Bombay, Calcutta, and Madras are hereby abolished, and the special law and procedure applicable therein will have no effect hereafter.

STATEMENT OF OBJECTS AND REASONS

During British Rule in India great discriminations existed in favour of British subjects, European and Americans in the judicial administration of this country. The Dominion Parliament in 1949 by the Criminal Law (Removal of Racial Discrimination) Act, 1949 (Act XVII of 1949) abolished the discriminatory provisions in the Criminal Law of the country. A similarly offending provision in the Civil Law administration, however, escaped their notice. The Original Side of Calcutta High Court, representing the old Supreme Court of Calcutta and its predecessor the Mayor's Court, which meant for the benefit of European and British subjects only, were allowed to continue even after independence. As a result the said Original Side still has a separate system of Law and Procedure, as distinguished from the ordinary Civil Law and Procedure obtaining in the Civil Courts of India. It is, therefore, incumbent upon the Parliament of India to abolish the Original Side altogether as the very people for whom it was meant are no longer in authority and their privileges cannot be inherited by a section of the people inhabiting the local limits of that jurisdiction. Besides, the continuance of the Original Side, discriminates amongst the High Courts of India, since excepting the three (Presidency) High Courts of Calcutta, Madras and Bombay no other High Court has an Original Side.

This Bill seeks to abolish the Original Side in these aforesaid three High Courts.

DWIJENDRALAL SEN GUPTA.

VI

Bill No. XX of 1972

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Constitution (Amendment) Act, 1972.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment of article 217.

2. In article 217 of the Constitution, in clause (2), to part (*b*), the following proviso shall be added, namely:—

"Provided that no person shall be appointed as a Judges of the High Court of which he has been or is an advocate at the time of appointment.".

STATEMENT OF OBJECTS AND REASONS

The practice prevailing at present is that an advocate practising in a High Court is appointed as a Judge in the same High Court. This method cannot be considered as satisfactory for the reason that such advocates before appointment as Judges have professional contacts with the litigant public and the appointment to the same High Court is against the spirit of the well-known maxim that "Justice must not only be done but must appear to have been done." In order to ensure the independence of Judges it is essential and desirable that no person should be appointed as a Judge of that very High Court of which he has been or is an advocate at the time of appointment. The proposed amendment is, therefore, necessary for ensuring and strengthening judicial independence which is absolutely necessary for enforcing the Rule of Law.

Hence this Bill.

OM PRAKASH TYAGI.

B. N. BANERJEE,

Secretary.

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI, 1972